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SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-80706; File No. SR-ICEEU-2017-005]

May 17, 2017

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to Clearing House Contributions to CDS Default Resources

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 4, 2017, ICE Clear Europe Limited (“ICE Clear Europe” or “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II and III below, which Items have been primarily prepared by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the changes is to modify the ICE Clear Europe Finance Procedures to implement certain changes to the Clearing House CDS Contributions.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

1. Purpose

ICE Clear Europe proposes revising its Finance Procedures to implement certain changes to the Clearing House CDS Contributions. These revisions do not involve any changes to the ICE Clear Europe Clearing Rules.<sup>3</sup>

ICE Clear Europe maintains a waterfall of defined default resources, including its CDS Guaranty Fund, to provide financial resources to cover potential losses resulting from the default of a CDS Clearing Member.<sup>4</sup> The CDS Guaranty Fund consists of required contributions made by CDS Clearing Members. Currently, ICE Clear Europe's contribution to CDS default resources is split into two parts—namely, a Clearing House CDS Initial Contribution and a Clearing House CDS GF Contribution. Under the default resource waterfall, assets (including margin and CDS Guaranty Fund contributions) provided by the defaulting CDS Clearing Member are used first to cover default losses. In the event the Clearing House experiences losses from the default of a CDS Clearing Member that exceed the resources provided by the defaulter, the Clearing House CDS Initial Contribution would, in accordance with the Rules, be applied next, and prior the use of CDS Guaranty Fund contributions of non-defaulting CDS Clearing Members.

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<sup>3</sup> Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules (the "Rules").

<sup>4</sup> The waterfall of application of default resources upon the default of a CDS Clearing Member is set out in ICE Clear Europe Rules 908(c) and (g), and is summarized here for reference.

Following exhaustion of the Clearing House CDS Initial Contribution, the CDS Guaranty Fund contributions of non-defaulting CDS Clearing Members and the Clearing House CDS GF Contribution would be applied to cover CDS default losses, on a pro rata basis. The respective amounts of the Clearing House CDS Initial Contribution and Clearing House CDS GF Contribution are determined in accordance with paragraph 15.2 of the Finance Procedures, and are notified to Clearing Members by Circular.

ICE Clear Europe proposes to amend paragraph 15.2 of the Finance Procedures in order to permit the Clearing House to redesignate all or a part of the Clearing House CDS GF Contribution as additional Clearing House CDS Initial Contribution. ICE Clear Europe does not propose to change the aggregate amount of, or basis for calculating, the Clearing House CDS GF Contribution and Clearing House CDS Initial Contribution. The effect of any such redesignation would be that more of ICE Clear Europe's contribution to CDS default resources would be used at an earlier point in the waterfall of default resources, prior to the use of CDS Guaranty Fund contributions of non-defaulting CDS Clearing Members. Such a redesignation will thus provide greater protection of CDS Clearing Member contributions of non-defaulting CDS Clearing Members, and reduce the likelihood that the use of CDS Clearing Member contributions will be necessary in a default scenario.

Specifically, paragraph 15.2(a) of the Finance Procedures, which establishes the amount of the Clearing House CDS Initial Contribution, would be amended to provide that the Clearing House can increase such amount by redesignating all or part of the Clearing House CDS GF Contribution as a Clearing House CDS Initial Contribution.

ICE Clear Europe would be required to notify Clearing Members by circular of any such redesignation.

Conforming amendments have been made in paragraph 15.2(b) to refer to amounts so redesignated as Clearing House CDS Initial Contributions, as well as to clarify a cross-reference. Similar conforming changes are made in paragraph 15.2(c), which establishes the amount of required Clearing House CDS GF Contributions, to take into account any amounts thereof that are redesignated as Clearing House CDS Initial Contributions. Paragraph 15.2(d) would be revised to clarify the obligation to replenish Clearing CDS GF Contributions (including such amounts that are redesignated as Clearing House Initial CDS Contributions) when applied in accordance with the Rules, as well as to provide that any required replenishments of the Clearing House CDS GF Contribution could similarly be redesignated as Clearing House CDS Initial Contributions and to clarify a cross-reference. Paragraph 15.2(g) would be revised to clarify that the Clearing House would not be required or permitted to redesignate any amount as Clearing House CDS Initial Contributions as Clearing House CDS GF Contributions solely as a result of changes in the amounts of a Clearing House CDS Contribution because of exchange rate fluctuations.

The decision to redesignate any amount of Clearing House CDS GF Contribution as Clearing House CDS Initial Contribution (and to make any change in any such redesignation) would be made by the ICE Clear Europe Board, in consultation with the CDS Risk Committee.

## 2. Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act<sup>5</sup> and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22,<sup>6</sup> and are consistent with the prompt and accurate clearance of and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>7</sup> ICE Clear Europe is not changing the aggregate level of its contributions to CDS default resources, or the overall level of CDS default resources generally. The amendments will provide the Clearing House the ability to move its own contributions to CDS default resources higher in the waterfall of default resources, so that more of such contributions will be used prior to the CDS Guaranty Fund contributions of non-defaulting CDS Clearing Members. Such a redesignation will make it less likely that the Clearing House would need to use the CDS Guaranty Fund contributions of non-defaulting CDS Clearing Members, and thus provide additional protection to such contributions of non-defaulting CDS Clearing Members. ICE Clear Europe notes in this regard ongoing industry discussions concerning the appropriate level and seniority of clearing house contributions to default resources generally.<sup>8</sup> In light of

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<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 17 C.F.R. § 240.17Ad-22.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> See, e.g., Committee on Payment and Market Infrastructures/Board of the International Organization of Securities Commissions, *Resilience and Recovery of*

the evolving views of market participants on these issues, ICE Clear Europe believes that the amendments will provide it appropriate flexibility to determine to change the balance between Clearing House CDS Initial Contributions and Clearing House CDS GF Contributions to place more of its own assets at risk earlier in the waterfall of default resources. In ICE Clear Europe's view, the amendments will thus promote the prompt and accurate clearance and settlement of cleared contracts, and the protection of market participants and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.<sup>9</sup> For similar reasons, ICE Clear Europe believes that the amendments are also consistent with the requirements regarding financial resources in Rule 17Ad-22(b)(3)<sup>10</sup> and Rule 17Ad-22(e)(4).<sup>11</sup> As noted above, the decision to redesignate any amount of Clearing House CDS GF Contribution as Clearing House CDS Initial Contribution (and to make any change in any such redesignation) would be made by the ICE Clear Europe Board, in consultation with the CDS Risk Committee. As a result, in ICE Clear Europe's view, the amendments incorporate governance arrangements that fulfill the requirements of Rule 17Ad-22(e)(2)<sup>12</sup>, including that the governance arrangements, among other matters, support the public interest requirements of Section 17A of the Act and the objectives of participants, as set forth above.

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*Central Counterparties (CCPs): Further Guidance on the PFMI*s (consultative report) (August 2016), paragraph 6.

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 17 C.F.R. § 240.17Ad-22(b)(3).

<sup>11</sup> 17 C.F.R. § 240.17Ad-22(e)(4).

<sup>12</sup> 17 C.F.R. § 240.17Ad-22(e)(2).

B. Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed changes to the rules would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments will solely affect the relative priority of ICE Clear Europe's contributions to CDS default resources, in a manner that will allow ICE Clear Europe to use more such resources prior to the use of any CDS Guaranty Fund contributions of non-defaulting CDS Clearing Members. ICE Clear Europe does not believe the amendments would adversely affect Clearing Members, materially affect the cost of clearing, adversely affect access to clearing in CDS Contracts for Clearing Members or their customers, or otherwise adversely affect competition in clearing services. As a result, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission and Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or  
(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form  
(<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2017-005 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICEEU-2017-005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent



amendments, all written statements with respect to the proposed rule change, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation#rule-filings>.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2017-005 and should be submitted on or before [INSERT DATE 21 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Eduardo A. Aleman,  
Assistant Secretary.

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

